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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,	)	
	)	CASE NO: A05-097 CR (JWS)
Plaintiff,	)	
	)	
v.	)	
	)	
WILKINS FURMENT	)	
	)	
Defendant.	)	
_____	)	

**MR. FURMENT'S REPLY**

Defendant, Wilkins Furment, through his counsel, Hugh W. Fleischer, hereby files his Reply to the government's Opposition to defendant's Motion to Vacate Sentence under 28 U.S.C. § 2255.

**I. TRIAL COUNSEL WAS INEFFECTIVE RE PLEA AGREEMENT**

Mr. Wilkins Furment asserts that his trial attorney failed to provide him with adequate representation. He claims that he failed to advise him of the terms and

conditions of the Plea Agreement. Had such Agreement been clearly explained to the petitioner, who is illiterate, there may not have been a plea.

In response to the government brief, Mr. Furment claims that he does meet the **Strickland** two-prong test, as set forth below. He, moreover, claims that his attorney did not explain the Plea Agreement nor file an appeal.

In **McMann v. Richardson**, 397 U.S. 759, 771 n.14, 90 S. Ct. 1441, 25 L.Ed.2d 763 (1970), the U.S. Supreme Court declared that "the right to counsel is the right to the effective assistance of counsel." Cited in **Jennings v. Woodford**, 290 F. 3<sup>rd</sup> 1006, 1012 (9<sup>th</sup> Cir. 2002).

In **Strickland v. Washington**, the Supreme Court formulated a two prong test. A petitioner claiming ineffective assistance of counsel must demonstrate (1) that his attorney's representation "fell below an objective standard of reasonableness," (the "performance prong") and (2) the attorney's deficient performance prejudiced the defendant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (the "prejudice prong") **Strickland**, 466 U.S. @ 688. 694, 104 S. Ct. 2052.

**Strickland's** two-prong test applies to ineffectiveness claims arising from the plea process. **Hill v. Lockhart**, 474

U.S. 52, 57-58, 106 S. Ct. 366, 88 L.Ed.2d 203 (1885)

(holding that voluntariness of a guilty plea depends on the adequacy of counsel's legal advice).

See **U.S. v. Blaylock**, 20 F.3d 1458 (9<sup>th</sup> Cir. 1994);  
**Betancourt v. Willis**, 814 F.2d 1546 (11<sup>th</sup> Cir. 1987).

Wherefore, Mr. Furment re-asks to have an evidentiary hearing on this matter to determine whether the case should be remanded to the U.S. District Court, with corrective action to be taken.

DATED this 4<sup>th</sup> day of January, 2008.

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CERTIFICATE OF SERVICE

I certify that on the 4<sup>th</sup> day of  
January, 2008, a true copy of the  
foregoing was delivered electronically  
to the following counsel:

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